

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

National Cable Television Association

Daniel L. Brenner
Vice President for Law &
Regulatory Policy

1724 Massachusetts Avenue, Northwest
Washington, D.C. 20036-1969
202 775-3664 Fax 202 775-3603

July 23, 1996

Delivered by Hand

Mr. John Nakahata
Senior Legal Advisor
Office of the Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

RECEIVED

JUL 23 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 96-98

Dear John:

Following up our meeting last week with Howard Symons and NCTA lawyers, I am attaching NCTA's positions on two issues. First, as to performance standards for ILECs when providing interconnection and network elements, NCTA urges that while the Commission need not establish specific performance standards, it should describe the areas that must be negotiated or arbitrated, including enforcement provisions. Second, as regards CLEC calling scopes, the Commission should reject incumbent LEC arguments that reciprocal compensation arrangements apply only to the termination of local traffic as defined by the incumbent LEC.

If you have any questions, please feel free to call.

Sincerely,



Daniel L. Brenner

DLB:tkb

Attachment

cc: Regina Keeney, Chief Common Carrier Bureau
Jackie Chorney, Sr. Legal Advisor
Daniel Gonzalez, Sr. Legal Advisor
James Casserly, Sr. Legal Advisor
Lauren Belvin, Sr. Legal Advisor
William F. Caton, Acting Secretary

No. of Copies rec'd 0+1
List A B C D E

NATIONAL CABLE TELEVISION ASSOCIATION, INC.
EX PARTE FILING - CC DOCKET NO. 96-98

CLEC CALLING SCOPES

The Commission should reject ILEC arguments that reciprocal compensation arrangements between ILECs and CLECs are only applicable to the termination of ILEC-defined "local" traffic. A CLEC should not be required to pay toll access charges to terminate its customers' calls within its local calling area. The Act itself does not limit reciprocal compensation arrangements to instances where the incumbent classifies the call as local.

If the Commission permits ILECs to impose toll access charges on CLEC-originated calls that the ILEC classifies as toll, it will in effect impose ILEC geographic calling areas and rate plans on CLECs. Limiting a CLEC to an ILEC's calling scope will undermine competition by preventing the competitor from using calling areas to distinguish itself from the incumbent or other CLECs. In a competitive marketplace, each carrier should be able to exploit its particular advantages and seek customers through the development of alternatives to the traditional standard local service offerings available to consumers today.

NATIONAL CABLE TELEVISION ASSOCIATION, INC.
EX PARTE FILING - CC DOCKET NO. 96-98

PERFORMANCE STANDARDS

Consistent with section 251(c)'s requirements that ILECs provide interconnection and network elements on just, reasonable, and nondiscriminatory terms, all interconnection agreements must include clearly defined performance standards to discourage unreasonable and unsatisfactory delivery of services by competitor providers. Where the parties cannot agree on performance standards, the State must arbitrate this issue, consistent with FCC guidelines. Specific performance standards must be included in any agreement submitted to a State commission for approval, and the State commission should not be permitted to approve any agreement that does not include such standards.

While the Commission need not establish specific performance standards, it should describe the areas that must be negotiated or arbitrated under section 252. For instance, ILECs must be prepared to agree to service intervals and procedures for the deployment and installation of trunks; the transfer of customers from ILECs to CLECs; the administration of number resources (for so long as ILECs retain this function); provision of number portability under the Commission's recently-adopted rules; and the implementation of collocation. In connection with collocation, agreements should address such issues as construction costs, construction time, interconnection facilities, number of engineers required, the number of engineering hours required, and the appropriate hourly wage for such engineers.

ILECs should also be required to "unbundle" their provisioning activities to reflect the fact that a competitor may not need the ILEC to perform all of the functions associated with the ILEC's own provisioning of service to end users. Cf. 47 U.S.C. § 251(c)(2)(C) (ILEC must provide CLEC with interconnection that is at least equal to what ILEC provides to itself, a subsidiary or affiliate, or any other third party). In particular, there should be a presumption that functions that can be performed electronically should be completed within 24 or 48 hours after the ILEC receives the request. For instance, activation of a new ILEC customer may require such time-consuming activities as new construction and truck rolls; activation of a CLEC customer may require only that the ILEC make a software change to move the customer's telephone number. In the latter case, a service interval that assumes construction or truck rolls imposes unnecessary and unjustified delay.

The enforcement of provisioning requirements and all other aspects of agreements between an ILEC and a CLEC should be swift and sure. First, where there are delays and other non-compliance by an ILEC, there should be a presumption that the agreement has been violated and the burden placed on the ILEC to explain why a penalty should not be levied. Second, the penalties for violations should include a substantial reduction in the rates paid for the particular service or services that have been delayed or have not been provided in compliance with an agreement. To serve as a meaningful sanction, this reduction should continue for at least one year after a determination that a violation has occurred. Finally, the ILEC should be liable for any costs incurred by the CLEC that result from the incumbent's facility failures or actions by ILEC personnel.